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OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

April 28, 1939

Hon. Forrester Hancock
Criminal District Attorney
Waxahachie, Texas

Dear Sir:

Opinion No. 0-690

Re: May the Commissioners' Court donate
money to private endowed library?

This is in reply to your letter of April 25,
1939, in which you ask the following question:

"Sims Library is located in the City of Waxahachie, Ellis County, Texas and is privately endowed, Mr. Sims, now deceased, having created a trust in his will for the erection and maintenance of the same. Among other provisions contained in this will is a statement which says that said library shall be dedicated and maintained for the use and benefit of the people of Ellis County, Texas. The Commissioners Court of Ellis County, Texas has voted the payment of a \$750.00 annual donation to this library, and now the auditor certifies the question to my office, questioning the validity of such donation, there having been levied no tax for such donation and said library having not been accepted nor legally maintained by said county previously. That is, the Commissioners' Court of Ellis County, Texas now purports to give to the trustees of said Sims Library an annual donation of \$750.00, which library and which Board of Trustees are not under the supervision, control, or jurisdiction of the local Commissioners Court."

Hon. Forrester Hancock, April 28, 1939, Page 2

Your attention is directed to certain provisions of the Constitution of Texas which appear to have a bearing upon this question. Article 16, Section 6, reads as follows:

"No appropriation for private or individual purposes shall be made. A regular statement, under oath, and an account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law."

Article 3, Section 50 of the Constitution reads as follows:

"The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever."

Article 3, Section 51 of the Constitution reads as follows:

"The Legislature shall have no power to make any grant or authorize the making of any grant of public money to any individual, association of individuals, municipal or other corporations whatsoever...."

Article 3, Section 52 of the Constitution reads as follows:

"The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public

Hon. Forrester Hancock, April 28, 1939, Page 3

money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company;"

Article 11, Section 4 of the Constitution reads as follows:

"No county, city, or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit; but this shall not be construed to in any way effect any obligation heretofore undertaken pursuant to law."

Article 8, Section 3 of the Constitution reads as follows:

"Taxes shall be levied and collected by general laws and for public purposes only."

The Commissioners' Court is created by the Constitution and is a body exercising delegated powers. It has no authority except that conferred upon it by the Constitution and laws of this state. (Bland vs. Orr, 39 SW 558; Mills County vs. Lampasas County, 40 SW 404; Baldwin vs. Travis County, 88 SW 484 and Art. 5, Sec. 18 of the Constitution of the State of Texas).

The question as to what extent can public funds be used by governmental bodies for charitable purposes has caused considerable conflict in the decisions of the different courts, and the courts have made the further distinction as to the authority of the particular body to expend public money and as to the purpose for which the money was appropriated for a public purpose.

In Ruling Case Law, No. 7, page 936, we find the

following statement:

"Counties being created for purposes of government, and authorized to exercise to a limited extent a portion of the power of the state government, have always been held to act strictly within the powers granted by the legislative act establishing them. Accordingly, the statute is to them their fundamental law, and their power is only coextensive with the power thereby expressly granted, or necessarily or reasonably implied from its granted powers. All the powers with which the county is intrusted are the powers of the state, and all the duties with which they are charged are the duties of the state, and hence these powers and privileges may, in general, be changed, modified or taken away. Pursuant to such general purposes of government, a county has power to receive and hold property, to incur debts and liabilities within statutory limits, to make contracts through its lawfully constituted officers, and, generally, to manage all the business affairs of the county. In general, the power to incur obligations, and to levy taxes on the people of the county and on their property, is given to counties by statute; but this is a power that must be exercised only in the furtherance of county or public purposes."

The public purpose for which money may be raised comes up in a variety of ways; and will be briefly reviewed. *Ussury vs. City of Laredo*, 65 Tex. 406, the City of Laredo passed an ordinance giving exclusive control over schools within its limits. Ussury signed a contract with the trustees that were appointed by the County Judge, and on request for payment and refusal brought suit for same. The Supreme Court denied his claim and held that the method by which public schools are created was not followed, and that the public school fund could be used only for the public schools of Texas.

Hon. Forrester Hancock, April 28, 1939, Page 5

Attorney General Looney on May 19, 1913, gave an opinion to the county judge of Shelby County, Texas, that an appropriation by the Commissioners' Court to aid a county fair or to make an exhibit at the State Fair was unauthorized in Texas.

In Bennett vs. City of LaGrange, 112 SW 482, the Supreme Court of Georgia held that an appropriation of \$75.00 per month to the Salvation Army to be used in the public charity of the city and accounted for monthly was a violation of the Constitutional provision that "no money shall ever be taken from the public treasury, directly or indirectly, in the aid of any church, sect or denomination or any sectarian institution.

The case of St. Mary's School vs. Brown et al, 45 Md. 310, was a suit by a taxpayer to restrain the mayor and city counsel of Baltimore from granting appropriations to serve charitable institutions. The court said:

"It is certain, we suppose, that the city counsel should have no power to make appropriations to these institutions simply as such, not because merely of the very humane and laudible objects and purposes for which they are created by their founders and promoters; it is because of the actual service as benefits render the city that any claim could be urged for their support from the city treasury. And if this be so, what guarantee has the city that services are benefits will accrue, commensurate with the appropriations that are made? The same principal that would sustain appropriations of every private school and charity in the city."

Taking cognizance of the prohibitions of our Constitution, and recognizing the fact that the Commissioners' Court has only such powers as the statutes permit, it is our opinion that the Commissioners' Court is without

Hon. Forrester Hancock, April 28, 1939, Page 6

authority to make appropriations of public money to any library controlled and operated by private individuals however worthy the cause might be.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

W. P. Watts

W. P. Watts
Assistant

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APPROVED:

Ernest D. Mann
ATTORNEY GENERAL OF TEXAS